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To: [Wray Blattner](#); [Laurence W Prange](#); [Roelker, Ron](#); [Wolfe, Stephen](#); dan.tjoelker@epa.state.oh.us
Cc: [Matt Knecht](#)
Subject: Comments on 2nd Draft VAP Ph. II Work Plan, Supplemental Work Plan, and Response to USEPA Letter
Date: Friday, April 05, 2013 4:38:00 PM
Attachments: [CommentsonP2WPSWPRTC.pdf](#)

Wray/Larry/Ron, et al.

Attached, you will find comments from our Certified Professional, Matt Knecht, of HZW Environmental Consultants, LLC, concerning the proposed Second Draft VAP Phase II Work Plan, Supplemental Work Plan, and Response to USEPA letter provided to us for review by Ron Roelker last week. We recognize that USEPA is eager to move forward with sampling on the property, and as such we feel that any remaining issues with the Work Plans should be ironed out as soon as possible.

To these ends, Matt's comments are blunt and to the point. We want to see the investigation move forward, but we want it to be done right, and in accordance with all applicable USEPA and Ohio EPA rules and guidelines.

If you, or anyone else reviewing our comments, have any questions with regard to them, please let me know.

Tom.

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HzW ENVIRONMENTAL
CONSULTANTS, LLC

April 5, 2013

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Subject: *Comments on Second Draft of Voluntary Action Program (VAP) Phase II Work Plan, Supplemental Work Plan, and Response to USEPA Comment Letter prepared by AECOM for the Former Whirlpool Park Property (FWP), Township Road 187, Green Creek Township, Sandusky County, Ohio*

Dear Mr. Bowlus:

HzW Environmental Consultants, LLC (HzW) has had the opportunity to review the subject documents which were received on March 29, 2013. This letter provides HzW's comments.

REVISED VAP PHASE II WORK PLAN (P2WP)

This document was revised from the original draft P2WP dated March 6, 2013, and was the subject of a March 25, 2013 conference call between Mr. Steve Wolfe of the United States Environmental Protection Agency (USEPA), Mr. Ron Roelker of AECOM, and HzW's VAP Certified Professional, Mr. Matt Knecht.

Before getting to specific comments on the P2WP, HzW wishes to be clear. As the environmental representative of the current owner of the FWP (Mr. Jonathan Abdoo), HzW is alarmed at what we perceive to be an apparent indifference and/or non-responsiveness on the part of AECOM to certain statements, comments and/or requested assessment activities from Mr. Wolfe of the USEPA. During a conference call on March 5, 2013, Mr. Wolfe expressed that he was "frustrated" with the fact that AECOM had "missed three deadlines" in providing an approvable P2WP to the agency, and reiterated his December 2012 assertion that USEPA wanted a "full and thorough investigation" of the FWP. Mr. Wolfe also shared that – in addition to his personal frustration – his supervisors at USEPA considered the assessment of the FWP a high priority. Mr. Wolfe stated that he was under "pressure" to deploy USEPA's contractor (Weston Solutions) to perform the assessment if AECOM (on behalf of the Whirlpool Corporation) did not produce an approvable P2WP "as soon as possible".

Against this backdrop, AECOM produced the initial draft of the P2WP on March 6, 2013. USEPA responded with written comments drafted (primarily) by Mr. Wolfe in a letter dated March 12, 2013. During the March 25, 2013 conference call, each of the USEPA's comments was discussed in turn. While the revised P2WP submitted by AECOM on March 29, 2013 addresses some of the issues raised by the USEPA, the document contains inconsistencies, does not address all the items discussed and/or agreed to during the conference call, and – in HzW's opinion – does not capture the means and methods stressed by Mr. Wolfe for the evaluation of the obvious materials dumped in what AECOM designated Identified Area (IA) 3.

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To be candid, we are concerned that a lack of fully addressing Mr. Wolfe's desired goal for a complete assessment of the FWP has potentially serious ramifications. If, for example, the USEPA's frustration rises to the point where Weston Solutions "takes over" the assessment of the FWP, both the Whirlpool Corporation and Mr. Abdoo would lose control over the assessment process and the flow of analytical data. From HzW's perspective, this is not a desired endpoint and could put Mr. Abdoo in an awkward position as owner of the FWP, if for no other reason than public perception.

Finally, this apparent indifference extends to comments provided on previous AECOM documents by HzW on behalf of Mr. Abdoo. To this point, HzW has attempted to provide its comments and requested clarifications in what was hoped to be a "suggestive" or "advisory" tone, and were intended to complement (rather than supplant) the efforts of AECOM. Yet, most of these comments have either been ignored or otherwise not responded to (in part or in full), leaving HzW and Mr. Abdoo to conclude that our input "does not matter" to the Whirlpool Corporation and/or AECOM. This has fostered suspicion and a divisive loss of confidence (at least in speaking with Mr. Abdoo) that the Whirlpool Corporation and/or AECOM are hearing (or even desire) our input, despite the fact that Mr. Abdoo owns the FWP and has cooperated fully with the Whirlpool Corporation and AECOM to this point.

Comment 1: Section 2.2

We have made this comment at least once previously, regarding the VAP eligibility status of the FWP vis-à-vis the presence of polychlorinated biphenyls (PCBs) in soils. The language in Section 2.2 confuses the issue, and implies a VAP eligibility barrier exists merely because of the presence of PCBs in soil on the FWP. Ohio EPA (specifically, Mr. Dan Tjoelker) has made a similar comment to Mr. Roelker in the past. Simply put, we believe the language of Section 2.2 should be revised to reflect the following:

"The Property is eligible to participate in the VAP, although any remedial obligations under the Toxic Substances Control Act (TSCA) would need to be satisfied prior to submittal of the VAP No Further Action (NFA) Letter."

Comment 2: Section 2.3, LA#1, first full sentence

As we have stated previously, there are multiple lines of evidence (the most compelling being an oblique aerial photograph taken in approximately 1959, well after the swimming pool had been completed) that the Former East Ravine was not a shallow "swale" (as indicated in this sentence), but was a distinct topographic erosional feature at least 12 feet deep and occupied by an intermittent stream. Further, as we have stated previously, multiple lines of evidence indicate that any "filling" of the Former East Ravine with spoils from the excavation of the swimming pool in 1953 and 1954 was very limited in nature.

Comment 3: Section 2.3, LA#2, second full sentence

The statement that the "stockpiles are associated with construction activity by the current property owner" is not accurate. These stockpiles were trucked to the FWP by a contractor responsible for constructing the new elementary school in Green Springs, Ohio. Thus, the

original source of these materials is known, as is the party responsible for bringing them to the FWP. No activity conducted by Mr. Abdoo contributed to these stockpiles. The inaccuracy of this statement was pointed out to Mr. Roelker by HzW on the March 6, 2013 conference call. Mr. Roelker indicated that this statement would be modified, and yet it remains in the draft P2WP.

Comment 4: Section 2.3, LA#3, first full sentence

The description of materials dumped in this area omits any reference to the obvious drums which are visible. Mr. Wolfe pointed out this omission to Mr. Roelker on the March 25, 2013 conference call; yet, the description of dumped materials in this section continues to omit any reference to the obvious drums.

Comment 5: Section 4.0, last sentence

In describing USEPA's previous sampling effort, this section includes the statement that "...two samples [exhibited] PCB concentrations above the TSCA remediation standard of 50 [milligrams per kilogram, or] mg/kg." This statement is inaccurate and misleading in several regards, and implies a very poor understanding of TSCA remedial requirements. Under TSCA, the noted value – 50 mg/kg – is both a "trigger value" and a "materials management value". A detection of PCBs in excess of 50 mg/kg in soil "triggers" certain remedial obligations. Further, materials containing greater than 50 mg/kg of PCBs are required to be managed (i.e., treated and/or disposed of) in a stricter and more costly manner than materials containing less than 50 mg/kg of PCBs; thus 50/mg/kg is a "materials management value". Actual "TSCA remediation standards" are a sliding scale dependent upon whether or not the affected medium or material is considered porous or non-porous, and whether the area in question is high occupancy or low occupancy.

We concede that there is a single circumstance under TSCA where 50 mg/kg of PCBs in soil could be considered a "remediation standard". This circumstance would require a) Mr. Abdoo or any other potential residential user no longer owning the FWP and b) fencing the affected portion(s) of the property and c) putting up the TSCA-prescribed "warning signage" on the fences indicating that the site was contaminated with PCBs. This qualifies the site for TSCA defined "low occupancy".

This concession aside, Mr. Wolfe has told Mr. Roelker on at least one occasion that – given the current circumstances – the TSCA remediation standard for PCBs in soil on the FWP will be 1.0 mg/kg, since Mr. Abdoo intends to use the property for residential purposes (i.e., TSCA "high occupancy") and the affected medium (soil) is porous. Clearly, as HzW has stated and/or inferred on behalf of Mr. Abdoo in several previous comment letters, the site will NEVER be "TSCA low occupancy" so long as the intended land use is residential. Mr. Wolfe has echoed this same conclusion to Mr. Roelker. Therefore, the statement that only two of the samples collected by the USEPA in 2012 exceeded "the TSCA remediation standard of 50 mg/kg" is both inaccurate, and misleading. We wish to be clear, and would ask the AECOM's documents would be similarly clear: in fact, six (6) of the seven (7) soil samples collected by USEPA in 2012 contained concentrations of PCBs which exceeded "the TSCA remediation standard" of 1.0 mg/kg. While HzW acknowledges that one (1) of these six (6) samples was collected below a depth of 10 feet (the Ohio VAP point of compliance for unrestricted residential soil direct contact), Mr. Wolfe has made it clear that he does not consider Ohio VAP points of

compliance binding upon the USEPA. Viewed in light of past statements from Mr. Wolfe, HzW believes that the most basic examination of the 2012 soil analytical data would lead anyone to conclude that all but one of the samples collected on behalf of the USEPA contained a concentration in excess of 1.0 mg/kg, the applicable "TSCA remediation standard". Our reason for placing so much emphasis on this point is that – again and again – the AECOM reports do not accurately reflect this fact, either by a) first suggesting in initial drafts of the Phase I Property Assessment that the land use could be something other than residential, or b) now citing a "TSCA remediation standard" in the P2WP which is, in truth, nothing of the sort. These repeated attempts to downplay or otherwise shroud the significance of the USEPA's 2012 analytical findings are misleading, and demonstrate an unwillingness to confront the facts at hand. On behalf of Mr. Abdoo, HzW objects in the strongest terms to the repeated propagation of some mythical clean-up standard for PCBs in soil at the FWP other than 1.0 mg/kg.

Comment 6: Section 6.3, IA#1, EU#2

On the March 25, 2013 conference call, HzW pointed out that the actual sediment blanket thickness in the so-called East Pond was 6 feet, while the sampling plan only contemplated sampling this material to a depth of 2 feet. Mr. Roelker responded that the sampling in the East Pond would "extend through the entire sediment blanket and continue 5 feet into native" materials. Yet, this section of the revised P2WP continues to indicate a sampling depth of the materials in the East Pond of 2 feet.

Before moving on to the next comment, HzW again re-states a question it has raised at least twice. Previous AECOM reports have cited historic Whirlpool Corporation records indicating the previous dredging of the Mill Race. Is there any knowledge relative to the disposition of the dredge spoils? This is a straight-forward question, asked for the benefit of Mr. Abdoo, and yet it remains unanswered.

Finally, HzW has a concern that the West Pond sediment blanket thickness may be greater than 2 feet thick. We repeat a request made on the March 25, 2013 conference call that – at a minimum – sampling in the West Pond at least penetrate the entire sediment thickness.

Comment 7: Section 6.3, IA#3, EU#1

HzW does not believe that the proposed test trenching reflected in the revised P2WP in the area of obvious dumping in IA#3 is in keeping with what USEPA requested on the March 25, 2013 conference call, and is – potentially – the most flawed portion of the document. Mr. Wolfe was clear that there was to be an attempt to fully excavate the fill to determine the types of materials present. While not wishing to anticipate Mr. Wolfe's reaction, HzW believes that the concept of "staging" as discussed in this section will not be well received by USEPA, nor will the use of a "light duty rubber-tired backhoe". Mr. Wolfe was clear that a "large excavator" would be necessary to penetrate (or even move) the large concrete slabs clearly observable in this area. HzW is still uncertain as to AECOM's intended approach in IA#3, and is concerned that this portion of the revised plan will receive a similar response from USEPA as did the original plan, whereby USEPA commented:

“As the plan is written, [USEPA is] not entirely sure what is going to occur here. When [USEPA] suggested test trenches...[the] intent was to actually dig through the material to see what may be buried here. Further explanation of what is going to occur will be required.”

Simply stated, HzW's concern is that, if AECOM cannot articulate the approach in IA#3 and that this portion of the revised P2WP remains insufficient in responding to USEPA's original comment, this will add to the agency's previously stated “frustration”.

Comment 8: Figure 6, Sampling in Former West Pond

The symbols in the West Pond indicate “proposed surface soil sample” locations. In the text, “surface soil samples” were described as locations where only the upper 6 inches of material were to be collected. This is in conflict with the text in Section 6.3 (IA#1, EU#2) where it was stated that sampling in the West Pond would extend to a depth of 2 feet, with the 0-1 foot and 1-2 foot intervals sampled and analyzed separately. Again, HzW would note its remarks in Comment 6, above, regarding the sediment blanket thickness in the West Pond. The desire is to sample discrete intervals – at a minimum – through the entire sediment thickness. Mr. Roelker had indicated on March 25, 2013 (at least when describing the sediment sampling in the East Pond) that sediment sampling would penetrate the entire sediment blanket thickness and continue five (5) feet into native material. As it stands, given the conflict between this figure, the text and what was communicated/represented on March 25, 2013, it is unclear to HzW what the sampling protocol is for the West Pond (and the East Pond, for that matter).

Comment 9: Table 1 (all three pages)

This table continues to reflect that “Inside Mixing Zone Criteria” will be the surface water comparable values. As was discussed on March 25, 2013, the Outside Mixing Zone Averages (OMZAs) are the applicable standards for surface water under Ohio's VAP, and are also the most conservative values (which was one of USEPA's comments on the initial work plan). This leads HzW to conclude that there will be yet another iteration of the P2WP to correct the reference to “Inside Mixing Zone Criteria”.

Comment 10: Appendix A (all pages)

Until a complete assessment of the FWP has been completed, HzW believes it is premature to conclude that media have not been affected by volatile organic compounds (VOCs), and thus no vapor intrusion risk exists. In HzW's experience with the VAP, it is preferable to mark any yet to be quantified exposure pathways as “yes” for completion until such time as one has the data in hand to conclude that, in fact, the pathway is a “no” for completeness.

SUPPLEMENTAL WORK PLAN

HzW's only comment on this work plan is related to the two older steel sand filters. First, the AECOM document is unclear on how these sand filters will be sampled. Having observed these appurtenances first hand, HzW believes that there should be a greater degree of specificity as to how the samples will be collected. Second we believe that there should be more than one sampling location for each of the two filters, and that discrete samples be collected of the entire

thickness of the filter media (i.e., the sampling needs to be fully penetrating). In short, there needs to be more specificity as to the means and methods of sampling, and more discussion of how discrete vertical intervals of the media will be sampled, in that these filters are of key concern to both USEPA (according to Mr. Wolfe) and Mr. Abdoo.

RESPONSE LETTER TO USEPA COMMENT LETTER ON INITIAL P2WP

Comment 1: CP Response to USEPA Comment 5

As indicated in Comment 7 relating to the revised P2WP, HzW does not believe that the proposed test trenching reflected in the revised P2WP in the area of obvious dumping in IA#3 is in keeping with what was discussed on the March 25, 2013 conference call, and does not respond to the USEPA's comment.

Comment 2: CP Response to USEPA Comment 9

While Section 6.2 of the text may have been revised, all three pages of Table 1 continue to reflect the "Inside Mixing Zone Criteria" as the comparative values for surface water samples rather than the OMZAs, and will – in all likelihood – require another iteration of the P2WP.

Comment 3: CP Response to USEPA Comment 11

As indicated in Comment 6 relating to the revised P2WP, on the March 25, 2013 conference call HzW pointed out that the actual sediment blanket thickness in the East Pond was 6 feet. The text of the revised P2WP and this response to the USEPA comment only contemplates sampling of the sediment material in the East Pond to a depth of 2 feet. This conflicts with a statement made by Mr. Roelker during the March 25, 2013 conference call, whereby he indicated that the sampling of the materials in the East Pond would "extend through the entire sediment blanket and continue 5 feet into native" materials. This response to the USEPA's comment does not reflect the stated intent of sampling in the East Pond. Finally, HzW would reiterate that we have the same concern regarding the West Pond.

Comment 4: CP Response to USEPA Comment 13

Despite the assertion that Tables 1 and 2 of the revised P2WP have been changed, a review of the document received on March 29, 2013 indicates, in fact, that the tables have not been changed, and still reflect "Inside Mixing Zone Criteria" as the applicable comparable values for surface water samples. As stated above, this oversight will – in all likelihood – necessitate another iteration of the P2WP.

Thomas M. Bowlus, Esq.
April 5, 2013
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In closing, it is hoped that this document conveys some of the concerns and frustrations expressed to HzW by Mr. Abdoo, and the essence of what HzW has gleaned during conference calls with Mr. Wolfe on March 6 and 25, 2013. Should you have any questions, please do not hesitate to contact us.

Sincerely,

HzW ENVIRONMENTAL CONSULTANTS, LLC



Matthew D. Knecht
President

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